

## AMENDMENTS

1990—Subsec. (e). Pub. L. 101-376 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.”

1978—Pub. L. 95-454 substituted “Actions based on unacceptable performance” for “Performance-rating plans; requirements for” in section catchline and in text substituted provisions relating to actions based on unacceptable performance, for provisions relating to requirements for performance-rating plans.

## EFFECTIVE DATE OF 1990 AMENDMENT

Section 2(c) of Pub. L. 101-376 provided that: “The amendments made by this section [amending this section and section 7511 of this title] shall apply with respect to any personnel action taking effect on or after the effective date of this Act [see below].”

Section 4 of Pub. L. 101-376 provided that: “This Act and the amendments made by this Act [amending this section, sections 7511 and 7701 of this title, and enacting provisions set out as notes under this section and section 7501 of this title] shall become effective on the date of the enactment of this Act [Aug. 17, 1990], and, except as provided in section 2(c) [set out above], shall apply with respect to any appeal or other proceeding brought on or after such date.”

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

#### § 4304. Responsibilities of the Office of Personnel Management

(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

(b)(1) The Office shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.

(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under section 4305), the Office shall direct the agency to implement an appropriate system or to correct operations under the system, and any such agency shall take any action so required.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1134.)

## HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2005.	Sept. 30, 1950, ch. 1123, § 6, 64 Stat. 1099.

In subsection (a)(1), the words “corresponding to an efficiency rating of ‘good’ under the Veterans’ Pref-

erence Act of 1944, as amended, and under laws superseded by this chapter” in clause (1) of former section 2005 are omitted, but are carried into section 3502.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

## AMENDMENTS

1978—Pub. L. 95-454 substituted “Responsibilities of the Office of Personnel Management” for “Ratings for performance” in section catchline and in text substituted provisions relating to the responsibilities of the Office of Personnel Management under this subchapter, for provisions relating to ratings for performance.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

#### § 4305. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 441; Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1134.)

## HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2006.	Sept. 30, 1950, ch. 1123, § 7, 64 Stat. 1099.

In subsection (c), the words “as a matter of right” are omitted as unnecessary.

In subsection (d), the words “are entitled” are substituted for “shall be afforded an opportunity”. The word “considers” is substituted for “deems to be”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

## AMENDMENTS

1978—Pub. L. 95-454 substituted “Regulations” for “Review of ratings” in section catchline and in text substituted provisions relating to regulations to carry out this subchapter, for provisions relating to review of ratings.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

#### [[§ 4306 to 4308. Omitted]]

## CODIFICATION

Sections 4306 to 4308, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 441, 442, were omitted in the general revision of this chapter by the Civil Service Reform Act of 1978, Pub. L. 95-454, § 203(a), Oct. 13, 1978, 92 Stat. 1131.

Section 4306 related to inspection of performance-rating plans.

Section 4307 related to prohibition of other rating procedures.

Section 4308 related to regulations for administration of the chapter, and is covered by revised section 4305.

#### SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

#### § 4311. Definitions

For the purpose of this subchapter, “agency”, “senior executive”, and “career appointee” have

the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167.)

#### EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

### § 4312. Senior Executive Service performance appraisal systems

(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

(1) permit the accurate evaluation of performance in any position on the basis of criteria which are related to the position and which specify the critical elements of the position;

(2) provide for systematic appraisals of performance of senior executives;

(3) encourage excellence in performance by senior executives; and

(4) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the senior executive and communicated to the senior executive;

(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee, or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty, in a higher level in the agency before the rating becomes final.

(c)(1) The Office shall review each agency's performance appraisal system under this section, and determine whether the agency performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review performance appraisal systems under this section to determine the extent to which any such system meets the requirements under this subchapter and shall periodically report its findings to the Office and to each House of the Congress.

(3) If the Office determines that an agency performance appraisal system does not meet the requirements under this subchapter (including regulations prescribed under section 4315), the agency shall take such corrective action as may be required by the Office.

(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167; amended Pub. L. 98-615, title III, § 306(b)(2), Nov. 8, 1984, 98 Stat. 3220.)

#### AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-615 inserted “, or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty,” and directed that “executive” be struck out which was executed by striking “executive” only where it appeared before “level in the agency”.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

### § 4313. Criteria for performance appraisals

Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

(1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(2) cost efficiency;

(3) timeliness of performance;

(4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

(5) meeting affirmative action goals, achievement of equal employment opportunity requirements, and compliance with the merit systems principles set forth under section 2301 of this title.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1168; amended Pub. L. 103-424, § 6, Oct. 29, 1994, 108 Stat. 4364.)

#### AMENDMENTS

1994—Par. (5). Pub. L. 103-424 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “meeting affirmative action goals and achievement of equal employment opportunity requirements.”

### § 4314. Ratings for performance appraisals

(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

(1) one or more fully successful levels,

(2) a minimally satisfactory level, and

(3) an unsatisfactory level.

(b) Each performance appraisal system shall provide that—

(1) any appraisal and any rating under such system—

(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

(B) are conducted at least annually, subject to the limitation of subsection (c)(3) of this section;

(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and